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No. 275

In the

Supreme Court of the United States

October Term, 1963

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY AND THE OHIO RIVER COMPANY,
Appellants,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Appellees.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

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MOTION TO AFFIRM

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MOTION TO AFFIRM

Pursuant to Rule 16, paragraph 1 (c), of the Revised Rules of this Court, The Baltimore and Ohio Railroad Company; The Chesapeake and Ohio Railway Company; Erie-Lackawanna Railroad Company; Louisville and Nashville Railroad Company; The New York Central Railroad Company; The New York, Chicago and St. Louis Railroad Company; Norfolk and Western Railway Company; and The Pennsylvania Railroad Company, protestants in the proceedings before the Interstate Commerce Commission and intervenors-as-defendants in the Court proceeding below, move that the judgment of the District Court be affirmed.

STATEMENT

A statement of the basis for the Interstate Commerce Commission decision, about which the appellants have complained, affords patent confirmation that nothing substantial has been presented here. In sum, it is: Based on identifiable evidence in the record before the Commission, the only conclusion which can be reached is that the joint barge-rail rates[1] published by The Ohio River Company and Chicago & Eastern Illinois Railroad Company are below the carriers' out-of-pocket cost of performing the service. A non-compensatory rate being unjust and unreasonable, it was accordingly found that the rates under investigation were unlawful and, therefore, they were ordered cancelled.

While other evidence of unlawfulness was presented, the Commission rested its findings solely on this basic issue for, unless a publishing carrier can show its proposed rate to be compensatory, there is no need to consider if it conforms to the other pertinent sections of the Interstate Commerce Act. Ascertainment of this initial question necessarily involves a routine but highly technical question of cost analysis.

The coal traffic originates at mines in eastern Kentucky and southern West Virginia, and the services to be performed on the joint barge-rail rate include: (1) terminal service at Huntington, consisting mainly of switching cars and dump-

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[1] There were two rates under investigation. The first was a joint barge-rail rate of $3.33 which was published to become effective June 1, 1960, but was suspended and investigated in *Barge-Rail Coal, Huntington, W. Va., to Chicago District*, I. & S. 7368, 315 I. C. C. 129. The second was a subsequent republication of the same joint barge-rail rate to include the three-cent increase allowed by the Interstate Commerce Commission in *Increased Rates on Coal and Petroleum Coke*, Ex Parte 223 (Sub-No. 5), 316 I. C. C. 159. The increased rate of $3.36, which was published to become effective on February 2, 1961, was suspended and investigated under *Coal via Barge-Rail from Huntington, W. Va., to Chicago, Ill., District*, I. & S. 7524, 315 I. C. C. 129.

ing coal into barges by Ohio River Company; (2) transportation by barge on the Ohio River from Huntington to Mt. Vernon by Ohio River Company; (3) intermediate terminal service at Mt. Vernon of lifting coal from barges to cars by a private contractor employed by Ohio River Company; and (4) rail transportation from Mt. Vernon to Chicago with the traffic interchanged to delivering lines who serve the receivers.

The cost of each of these services was developed in the record, all of which required a detailed consideration of the operation involved and then a development of the attendant costs that would be incurred in performing the service. Although the burden assigned by statute to show the changed rate to be just, reasonable and otherwise lawful was on the publishing carriers, they disclaimed this obligation. The Commission, nevertheless, found that the protestant eastern lines had affirmatively shown the higher of the two rates under investigation, $3.36, was 5.6 cents below the total out-of-pocket cost of performing the transportation service contemplated by the joint barge-rail rates. Because the administrative report concluded that the division of revenue received by Ohio River Company was slightly higher than the out-of-pocket cost of performing the barge service, the main issue on appeal involved the costs incurred by Chicago & Eastern Illinois.

The Commission, in developing the cost of operation over the Mt. Vernon route, did not rely on the operating cost analysis presented by the C&EI but, instead, used as a basis for its conclusions the cost presentation of the eastern lines. The reason for this was manifest. The C&EI based its cost evidence on 1957 operations while the eastern railroads used 1959 figures, which were the latest available at the time of the hearing. The evident motivation of C&EI in using 1957

figures was to avoid the impact of increased operating expenses which it had incurred in the interim between 1957 and the date of hearing in 1960, which, if ignored, would have artificially reduced the railroad's operating cost experience. Even the C&EI cost witness at the hearing admitted that 1959 unit expenses were more realistic than the figures he had used (*Barge-Rail Coal, Huntington, W. Va., to Chicago District*, I. & S. 7368, *supra*, R. 258).

The eastern lines applied the 1959 operating results to the Commission-developed Rail Form A[2] cost formula which it has said, in direct and unequivocal language, should be used to measure the compensativeness of a rate. In *Iron or Steel Articles from the East to the Southwest*, 310 I. C. C. 587, 594, it was said:

> "The railroads have a ready means of determining their costs on particular traffic: namely, the use of Rail

[2] The basic formula used was Rail Form A entitled *Formula for Use in Determining Rail Freight Service Costs*. This formula uses the expenses and statistics for a given year as reported to the Commission by the carriers and supplemental data derived from special studies made by the carriers. The starting point is the freight expenses and statistics which are derived in accordance with the rules prescribed by the Commission for the separation of expenses, rents, and taxes between the freight and passenger services. The freight expenses are inserted in Rail Form A and assigned or apportioned to services, such as running service (line-haul), yard and train switching services, station service, special services, and general overheads. The general overheads are later apportioned to the other services. The aggregate expenses for each service are then divided by appropriate service units to derive unit costs. The allowance for return is based upon depreciated original cost, present value of land and rights, and an allowance for working capital. These net figures are also separated between those applicable to freight service and those applicable to passenger service. The allowance for return is increased for a computed Federal income tax based upon the rate of return used for a particular study. The computed Federal income tax gives consideration to the rate of return used in the study and the amount of fixed charges of the carriers under study.

> Form A, a cost formula developed by our cost finding section, or of other recognized cost formulas. Such cost formulas should be employed in establishing the compensativeness of rates in issue."

The 1959 operating data used in connection with the Form A formula study were obtained from the Annual Report of C&EI to the Commission. After C&EI unit costs were ascertained by use of the formula, they were applied to reflect the operating experience factors which C&EI had developed by special studies, previously made, of the Mt. Vernon to Chicago operation. These operating experience factors had been introduced in evidence by C&EI in *Ex-River Coal, Mt. Vernon, Ind., to Chicago District*, I. & S. 7011, 308 I. C. C. 87; 310 I. C. C. 181. While the eastern lines considered these experience factors to understate the actual cost of handling the traffic, for they were developed during a period of peak business which tended to reduce the measuring cost units, nevertheless, they satisfied the purpose at hand because, even with C&EI's own studies, the joint rates could be shown to be below out-of-pocket cost. And, it is pertinent to note, as the Commission's report points out at page 130, the parties stipulated that the record in *Ex-River Coal, Mt. Vernon, Ind., to Chicago District*, I. & S. 7011, *supra*, would be made a part of the record in *Barge-Rail Coal, Huntington, W. Va., to Chicago District*, I. & S. 7368, *supra*. Thus, the operating experience factors used were not only those developed by C&EI from special studies which it had made of the Mt. Vernon to Chicago operation, but, also, they were part of the record before the Commission.

In effect, the Commission's decision is based on evidence which reflected:

(1) data reported by the C&EI to the Commission, which were

(2) utilized in preparing a Form A formula study, that was

(3) modified to reflect the results of studies made by C&EI of the Mt. Vernon to Chicago operation in *Ex-River Coal, Mt. Vernon, Ind., to Chicago District*, I. & S. 7011, *supra*, which were part of the record before the Commission, and

(4) the adjustments used in the Commission's restatement did not include certain operating expenses, weighing and clerical, which the C&EI argued would be unnecessary after publication of the joint rates.

The essence of the appellants' approach seems to be the Commission's report is derelict in not affording an adequate and lucid explanation of how it arrived at its conclusion that the rates were below the out-of-pocket cost of handling the traffic. Since the report clearly states that, except for three items, the eastern lines' cost study was used, there can be a question only about the three restated items, for all the other expense factors employed were those that had been explained on direct and subjected to the scrutiny of cross-examination and rebuttal. And so, the only real question before the District Court on appeal was whether there was a rational basis of support for the finding made as to these three restated items.

Because it would afford a ready demonstration to the District Court of the illusory nature of the appellants' claim that they simply could not take the Commission's report and, with the aid of the record, arrive at the expense factors used in the three restated items, the appellees, in their brief in the

District Court, made the arithmetical calculations[3] in an appendix. Still, this did not satisfy the appellants, for they say it cannot be done with the precision required. Amplifying this position, they urge in their Jurisdictional Statement that, of all the restated components, the most hopeless undertaking[4] was ascertainment of the origin car detention factor.

It requires some restraint to reply to this, for it is such an unwarranted assertion. This restatement of costs made by the Commission reduced the C&EI's car detention at Mt. Vernon from 2.01 to 1.80 days, the 2.01 days having been used by the eastern lines. The lower experience factor of 1.80 days reflected a weighting of the results of the two studies made by C&EI of the freight car detention at origin. Exhibit 87, introduced in *Ex-River Coal, Mt. Vernon, Ind., to Chicago District*, I. & S. 7011, *supra*, showed a detention of 1,352 cars for 2.01 days; and Exhibit 101 showed, during a later period of time, 765 cars were detained an average of 1.44 days. The weighted-average detention produced by these two C&EI studies developed an average car detention of 1.80 days. Accordingly, since it can be determined from the record that the origin car detention factor employed by the Commission simply reflected the use of all the evidence in the record concerning this characteristic of the movement, the finding made cannot be said to be beyond the record or

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[3] The appellants, at page 23 of their Jurisdictional Statement, assert that "the Commission, through its attorney, brought before the court working papers which seemed to reconcile the Commission's 'restated' cost with the record." If this implies that "working papers" were offered in evidence or shown to the District Court, this is incorrect. What the Commission did was simply to demonstrate, in an appendix to its brief, how the computations, which the appellants said could not be made, were derived.

[4] "This doesn't mean that the parties were as hopelessly at a loss to make a reasoned determination of how the Commission *probably* reached every restated component cost as they were in the case of origin car detention." (page 14)

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unknown to appellants, particularly since they had originally submitted the data in evidence. However, this is not all.

The appellants have actual knowledge how to make the calculations for, in their Petition for Reconsideration filed with the Commission, which was appended to the Complaint in the District Court, this same analysis was made by them of the evidence in the record pertaining to car detention at origin, with the conclusion reached that the weighted-average origin detention is 1.804 days.[5] If anything will, this should stultify any argument by C&EI and Ohio River Company that the report is deficient because it reaches a result which cannot be obtained from evidence in the record.

The second adjustment in the costs made by the Commission in its restatement reflected an acceptance of C&EI's position that the loaded cars would not be weighed for billing purposes and, therefore, this expense should not be included in the out-of-pocket operating costs.[5] However, the Commission found in *Barge-Rail Coal, Huntington, W. Va., to Chicago District*, I. & S. 7368, *supra*, at page 132:

> "The elimination of the cost of weighing at Brewer Yard does not support the contention of the Chicago & Eastern Illinois that the entire intertrain and intratrain switching expenses at that point should be excluded."

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[5] At page 7 of the Argument in Support of Petition for Reconsideration, attached as Appendix D to Complaint filed with the District Court by appellants, they said:

> "The cost study of the Commission does not, however, consider the proper car detention at origin. There are two studies of record of the freight car detention at origin. Exhibit 87, I. & S. Docket No. 7011, showed detention of 1352 cars for 2.01 days or a total of 2,717.52 days. Exhibit 101, I. & S. Docket 7011, introduced at the request of protestants, shows 765 cars in March 1958 were detained 1,102 days or an average of 1.44 days. The weighed average detention from these two studies disclose that the average detention at origin is 1.804 days."

While there was a statement by a C&EI witness that it was proposed the traffic would "run straight through," the evidence indicated the trains would be stopped at Danville, Illinois (Brewer Yard), for crew change. More important, the train weight employed from Mt. Vernon to Chicago of 5,916 tons[6] substantially exceeded the average daily tonnage,[7] 3,449.86 tons, of Mt. Vernon traffic moving to Chicago which would necessitate intertrain and intratrain switching to pick-up and set-off the additional traffic that would have to be handled if the train were to average 5,916 tons. The C&EI did not present any evidence to explain how it would obtain the missing 2,466.14 tons of daily traffic moving from Mt. Vernon to Chicago. Without such additional traffic, C&EI's proposed "straight through" operation would not be feasible. Further, the record contains no facts to support the unusual assumption that any train handling Mt. Vernon traffic would invariably operate from Mt. Vernon to Chicago, a distance of 305 miles, without handling other traffic to or from intermediate stations. Accordingly, there is substantial evidence in the record, including assumptions urged by C&EI, to justify a finding that at least one intertrain or intratrain switch would take place in the opera-

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[6]The train weight of 5,916 tons was developed by C&EI in *Ex-River Coal, Mt. Vernon, Ind., to Chicago District*, I. & S. 7011, *supra*, and used by the Commission in arriving at its cost conclusions in that case. Had the C&EI argued for a lower average train weight, it would have, of course, increased the cost of operation for, generally speaking, the greater the tonnage of traffic handled, the lower the out-of-pocket cost per ton, as the cost incurred is then distributed over the greater tonnage.

[7]Exhibit 11, introduced in *Barge-Rail Coal, Huntington, W. Va., to Chicago District*, I. & S. 7368, *supra*, shows that in the 213 days of 1960, covering the period from January through July, the latest information available at the time of the hearing, 734,822 tons of traffic moved via Mt. Vernon. The daily average tonnage during this period was, therefore, 3,449.86 tons.

tion of the various trains which handle Mt. Vernon coal to Chicago.[8]

The third adjustment made by the Commission in its restatement of costs involved the method of applying the trending factor used to produce costs that were currently incurred at the time of the hearing in September, 1960. The Form A study used, being predicated on average 1959 expense units, necessarily did not include any increases in wages or prices of materials subsequently incurred. The Cost Finding Section of the Interstate Commerce Commission, in its instructions accompanying the *Rail Carload Cost Scales by Territories*, indicates an approved method of developing this trending factor which was followed by the eastern lines in preparing their cost study.

The method of applying this factor employed by the Commission is the same as that followed in *Ex-River Coal, Mt. Vernon, Ind., to Chicago District*, I. & S. 7011, *supra*, which required the application of the trending factor to each of the underlying cost items, after an allowance for return was excluded. (See 308 I. C. C. 87, 91, fn. 7.) An arithmetical application of 2.9 per cent to the several pertinent expense unit factors affected produces the costs found by the Commission to be applicable in its restatement of costs.

The remaining assertion of deficiency in the Commission's report relates to one facet of Ohio River Company's cost of handling the traffic from Huntington to Mt. Vernon. The question raised relates to the application of a 2.9 per cent

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[8] Despite the above-cited evidence, appellants expressed sharp disagreement with the Commission's addition of a switching cost at Brewer Yard. Even assuming the Commission were in error, it was not *prejudicial* error because the outcome would not thereby be changed since the rate of $3.36 would still be below out-of-pocket cost. *Administrative Procedure Act*, 5 U.S.C.A. § 1009(e); *Watson Bros. Transportation Co.* v. *United States*, 180 F. Supp. 732, 740 (D. Neb. 1960).

trending factor to Ohio River Company's operating costs from Huntington to Mt. Vernon. This argument was urged to the District Court for the first time in the plaintiffs' reply brief. No evidence was cited in the record to show that this factor was incorrectly developed or applied. The Commission, in the case of Ohio River Company's costs, accepted the eastern lines' evidence, for it was unrebutted in the record and the cost testimony which was offered by Ohio River Company on direct could not be considered probative because of its refusal to supply any underlying data or working papers to support the bare conclusion offered.

There is substantial evidence in the record, considered as a whole, to support the conclusion of the Commission that the out-of-pocket cost incurred by Ohio River Company to handle the involved traffic from Huntington to Mt. Vernon is, at least, $1.268 and the out-of-pocket cost incurred by C&EI to handle the traffic from Mt. Vernon to Chicago is, at least, $2.1476, which produces a through out-of-pocket cost of $3.416. The higher of the two joint barge-rail rates at issue, $3.36, is, therefore, 5.6 cents per ton below the total out-of-pocket cost of performing the transportation service contemplated.

The second of the questions presented in the appellants' Jurisdictional Statement is as equally unsubstantial as the first and warrants no extensive consideration. The first problem encountered by appellants' second proposition is that it assumes too much. An essential premise is that C&EI accepts less revenue out of a "competitive" all-rail rate than it would receive from the joint barge-rail rate. The record before the Commission does not, however, support the conclusion that the all-rail rate referred to is competitive, for not one pound of coal moving via the Mt. Vernon route originated at mines served by those carriers who

participate in the all-rail rate cited. Conversely, the rate groups where the Mt. Vernon coal has originated are not served by those carriers participating in the all-rail route referred to by C&EI. All of the coal moving via Mt. Vernon originates at mines and in a rate group served either by The Chesapeake and Ohio Railway Company or Norfolk and Western Railway Company. The C&EI all-rail route is made only in connection with Louisville and Nashville Railroad Company which, since it has never originated a pound of this traffic and does not serve the rate group from which the coal is shipped, cannot be considered competitive in this movement. Before any proposition can be considered, substantial supporting facts must be established in the record. That is not the case here.

One further point. The appellants' second proposition engages in a bit of sophistry by seeking to create a straw man that can be struck down. The thrust of the argument is that the Commission found the C&EI out-of-pocket expenses exceeded its division of revenues and, therefore, condemned the joint barge-rail rates as unlawful.[9] It is acknowledged that the Commission did find C&EI out-of-pocket expenses exceeded the revenues that would be apportioned to it, but it did not condemn the rates under investigation for that reason. Rather, it ordered the joint rates cancelled because, as proposed, they were not compensatory.

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[9] "The attack is based upon the assertion that the barge-rail rate is noncompensatory, not because of any deficiency in the barge segment of the route (the division for which is conceded to be compensatory) but because of a deficiency in the rail portion thereof."

* * *

"The Commission accepted the argument of the attacking railroad and accordingly condemned the joint rate while leaving undisturbed the existing all-rail rates which are the source of discrimination against the River Company." (Appellants' Jurisdictional Statement, pages 32 and 33).

Thus, the appellants ask the Court to consider as a substantial question for review the contention that because the Commission adverted to the fact that the division received by the barge line covered its out-of-pocket costs but the railroad's portion did not, the rates were ordered cancelled because of the latter consideration. Not at all. Both the findings of the Commission and the decision of the District Court are addressed to the issue raised by the order instituting the investigation, which is the reasonableness and lawfulness of the joint rates proposed. Because they were found to be below the out-of-pocket cost of performing the service contemplated, they were ordered cancelled.

ARGUMENT

The Jurisdictional Statement has been cast in terms that do not accurately appraise the background of this litigation. The appellants draw a picture of themselves as embarking on a "unique experiment" which is the subject of "attack" by the eastern railroads. The C&EI asserts it "broke ranks" with the other railroad connections of The Ohio River Company and welcomed participation in the barge-rail rate *because* it had been denied participation in all-rail routes. Moreover, appellants assert that the joint barge-rail route created, because of the "inherent cheapness" of water transportation, would be more attractive than the all-rail routes.

There is nothing unique about this rate, for it is merely a routine effort of carriers, who would not normally participate in the movement of coal traffic from the southern Appalachian coal fields to Chicago, to gerrymander a route that could divert traffic from the direct and normal channels of trade. Why they wanted the business is understandable, but how they put the route together does not make their undertaking unique. The ensuing litigation, which the route

engendered, resulted from an order of investigation by the Interstate Commerce Commission directing the appellants to show that the rates proposed were just, reasonable and lawful. The fundamental character of the proceeding is not an attack by complaint of the eastern lines but, rather, an investigation upon Commission order. As for the reason why the C&EI joined in the rate, it is a real *non sequitur* to ascribe it to the asserted denial of participation in all-rail routes. A glance at a map confirms it is not realistic to expect that a railroad operating from Evansville or Mt. Vernon, Indiana, would participate in the movement of coal from southern West Virginia and eastern Kentucky fields to Chicago. Instead, C&EI "welcomed participation because" it was the only way it could possibly expect to divert this traffic to its lines. In doing so, however, it has not, as the appellants have asserted, created the low-cost operating route. The recent decision of the Commission in *Baltimore and Ohio Railroad Company, et al.* v. *Chicago and Eastern Illinois Railroad Company, et al.*, Docket 33706, decided January 28, 1963, ... I. C. C. ....., found that the all-rail routes of the eastern lines have the inherent advantage of cost when compared with the rail-river-rail route via Mt. Vernon.

Other equally chimerical attributes with which the appellants would cloak their position in this case could be cited; however, the most that can be said for the substance of their position is they apparently assume the burden of their complaint is satisfied without designating some substantial error in the Commission's restatement of cost which would deprive the conclusion reached of a rational basis of support. The unsubstantial nature of their request for review is that they, in effect, ask for further consideration even though they offer nothing more than an assertion that they are unable to comprehend the cost finding procedures employed

by the Commission. While the thesis of the appellants' plea —that they simply cannot understand the rationale of the Commission's conclusions concerning costs—is an interesting acknowledgment on their part, they should not be heard to make this argument, for any carrier regulated by the Commission is obliged to know the cost procedures it employs; and appellants must know how it was done in this case since they have peculiar knowledge of all factors involved.

If the rule were that the Commission must recite all the detail of mathematical calculations made in its cost analysis, its reports would be filled with trivia and minutiae which would add nothing to a reasonably informed litigant's knowledge and only encumber the real function which Congress has assigned to the administrative agency. It can be reasonably forecast that the result would be the courts' dockets would be burdened with frivolous appeals based on inconsequential mathematical errors or on inadvertent references which would have no material effect on the conclusions reached. Certainly, that was not the intent of Congress, and the courts have never held it was.

A recent proceeding, *General Motors Corporation v. United States*, 207 F. Supp. 641 (1962), outlines the limited obligation of the Commission to recite in its report the evidentiary facts relied upon. In this connection, the Court said at pages 647-8:

> "The Commission, as previously pointed out, is only required to set out ultimate, not evidentiary facts. Mills v. Lehigh Valley R. Co., supra [238 U. S. 473, 35 S. Ct. 888, 59 L. Ed. 1414]; Meeker & Co. v. Lehigh R. R. Co., supra [236 U. S. 412, 35 S. Ct. 328, 59 L. Ed. 644]; and need not make detailed findings of fact except in the case where damages are awarded, but need only file a written report stating its conclusions, together with its decision and Order. Alabama Great

Southern R. R. Co. et al. v. United States et al., supra [340 U. S. 216, 71 S. Ct. 264, 95 L. Ed. 225]. It is this Court's opinion that the Commission met these requirements.

"The precise contention here made by plaintiff that the Commission ignored certain material evidence, as indicated by its decision, which violated the requirements of 5 U.S.C.A. § 1007(b), was before a three judge court of this District in the case of Columbia Transportation Company v. United States, D. C., 167 F. Supp. 5, where the Court in a thorough, well-reasoned opinion said:

> 'The fact that the Commission did not in its report discuss various portions of testimony offered by plaintiffs, and give its reasons why it did not accept such evidence as controlling its decision, does not, in our opinion, constitute ignoring that evidence. Inasmuch as the Commission's report contained ultimate facts which it found from the record, it cannot be said that the Commission ignored any evidence that was before it. Failure to give to evidence the weight claimed for it by a party does not amount to ignoring such evidence.
>
> * * *
>
> 'We do not think that the Commission's report should be found inadequate because it did not discuss the evidence in detail. It is true that the report does not specifically refer to all of the evidence offered by the plaintiffs (protestants) but it was not necessary that the Commission first refer at length to the protestants' evidence and then say why it did not accept it or why it gave greater weight to evidence opposed to it. If the findings expressed the Commission's essential factual conclusions, and such conclusions constitute the basis for the Commission's disposition of the matter before it, it impresses us that such findings are sufficient.'

"Also see United States v. Pierce Auto Freight Lines, supra, 327 U. S. 515, at p. 529, 66 S. Ct. 687, at p. 695, where the Court stated:

> 'Given that the report contains all essential findings required, c.f. [State of] Florida v. United States, 282 U. S. 194, [51 S. Ct. 119, 75 L. Ed. 291] the Commission is not compelled to annotate to each finding the evidence supporting it.'"

Particularly pertinent is the following language from *Boston and Maine Railroad* v. *United States*, 153 F. Supp. 952, at page 958, which deals with the role of the Court in reviewing evidence and findings of the Commission as to cost of transportation:

> "It is plain that, in reviewing the decision of the Commission, our function is not to pass in detail on the evidence of costs. By virtue of long-standing rulings of the Supreme Court, these are matters solely for the judgment of the administrative agency. In Illinois Commerce Commission v. United States, 1934, 292 U. S. 474, 481, 484, 54 S. Ct. 783, 786, 78 L. Ed. 1371, the Court said:
>
> > 'Whether or not the cost study was representative, whether the study should have been more refined, and whether it should have been supplemented as appellants desired, are questions of fact, the determination of which is within the competence of the Commission. The Commission reached its conclusion after full hearing and thorough consideration of all questions presented. As the record affords a sufficient basis for the Commission's determination, it is not subject to review in the courts. See Manufacturers' Ry. Co. v. United States, 246 U. S. 457, 481, 38 S. Ct. 383, 62 L. Ed. 831; Assigned Car Cases 274 U. S. 564, 580, 47 S. Ct. 727, 71 L. Ed. 1204.

"* * * Appellants reach their conclusion as to the reasonableness of the interstate rate by disregarding the cost study as evidence because, as is contended, it was erroneously considered by the Commission. But as we have already said it was for the Commission to determine whether the cost study was adequate or whether it was necessary to refine or supplement it in order to make it dependable evidence for the purpose of rate making. The study itself afforded evidence of the reasonableness of the rate fixed, and upon the whole record there was abundant support for the Commission's finding, which was carefully and thoroughly considered in its report. There is no basis upon which the courts, not authorized to weigh evidence, could reexamine or disregard its conclusion.' See also Ayrshire Collieries Corp. v. United States, 1949, 335 U. S. 573, 593, 69 S. Ct. 278, 93 L. Ed. 243."

The principles enunciated above are applicable here.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the District Court should be affirmed.

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August 14, 1963

PROOF OF SERVICE

I, John W. Hanifin, one of the attorneys for the Rail Carrier Appellees herein and a member of the Bar of the Supreme Court of the United States, hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, and also upon the Solicitor General, Department of Justice, Washington 25, D. C., by mailing by air mail a copy thereof, properly addressed to said parties.

Dated at Richmond, Virginia, this 14th day of August, 1963.

.....

JOHN W. HANIFIN